

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4704 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

J M SHAH

Versus

STATE OF GUJARAT

Appearance:

None present for Petitioner

MR MUKESH PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/02/97

ORAL JUDGEMENT

1. The matter was called out for hearing in the first round then in the second round and lastly, in the third round but none put appearance on behalf of the petitioner.

2. Perused the Special Civil Application and heard learned counsel for the respondents. Challenge is made by the petitioner against the action of the respondent to

supersede him in the matter of promotion to the post of Superintending Engineer. It is not in dispute that under the Superintending Engineers (Civil) (Public Health Engineering Service, Class-I) Recruitment Rules, 1976, the criteria for promotion is proved merit and efficiency. In the year 1979, the Departmental Promotion Committee met for the purpose of preparing the select list of eligible Executive Engineers for promotion to the post of Superintending Engineers, but the name of petitioner was not included. In the service record of the petitioner there was an adversity of penalty of withholding of one grade increment for one year at the relevant time. In June, 1981, a batch of persons junior to him were promoted to the post of Superintending Engineers and he was not promoted. It is the case of the petitioner that his service record was good and the currency of minor penalty has also come to an end in the year 1981. The petitioner made a representation to the respondent on 16th June, 1981. The petitioner filed Special Civil Application No.2500/82 before this court challenging the action of the respondents of non-inclusion of his name in the select list and further challenging his supersession by the persons junior to him. This writ petition came to be decided by this Court on 23rd September, 1982. The order reads as under:

"Mr. Hathi withdraws this petition as Government has stated in affidavit that the petitioner's case will be considered again at the next occasion of selection. Spl.C.A. rejected as withdrawn."

3. From the reading of this order, on undertaking given by the respondents to consider the case of the petitioner at the next occasion of selection, the petitioner has not pressed the aforesaid writ petition for his supersession in promotion made as per his own case in the year 1979 and 1981. In the month of November, 1982, the select list for promotion to the post of Superintending Engineer was prepared in which the name of the petitioner was not included. The petitioner filed Special Civil Application No.1052/83 before this court. This court has decided that petition on 20th April, 1983, and the order reads as under:

Mr. D.M. Shah for M/s Ambubhai and Divanji makes the following statement:-

"The Department will send the names of both the petitioners to the Selection Committee and the Selection Committee will decide the

matter in accordance with law within six weeks from today. The status-quo will be maintained for one week after the decision is conveyed to the respective petitioners."

If the petitioners so desire, they may send in a representation to the Department within one week from today on receipt where of the Department will deal with it along with earlier representations, if any, before taking a final decision in the matter.

In view of the above, Mr. Mehta,
withdraws this petition. Dismissed as withdrawn.
Notice discharged. Interim relief vacated.

4. The petitioner submitted a representation to the State Government on 26th April, 1983. The State Government under its letter dated 5th September, 1983, annexure 'I' has intimated to the petitioner that the Selection Committee after considering his case has again not recommended his name for inclusion in the panel for Superintending Engineer's post. The representation filed by the petitioner was also rejected. Hence, this Special Civil Application.

5. The petitioner has raised a contention that, annexure 'I', communication dated 5-9-1983 of the State Government is a non-speaking i.e. cryptic order. It has next been contended in the Special Civil Application that the persons who were having the minor penalties or other adversities in their service record have been given the promotion.

6. The counsel for the respondents, on the other hand, given out that the petitioner's name was not included in the select list by the Selection Committee as he was only an average officer.

7. The criteria for promotion, as stated earlier, to the post of Superintending Engineer was proved merit and efficiency. Even if the petitioner has an average service record or good service record then too in the matter of promotion to be made on the aforesaid criteria, he cannot claim the promotion as of right. There, comparative merits of the officers have to be taken into consideration by the Selection Committee and the junior persons who are having more meritorious service record in compare to the seniors may be given the promotion. So if there is no adversity or adverse remark in the service record of the petitioner, itself is not sufficient to

justify that the action of the Selection Committee not to include his name in the select list is illegal, arbitrary and perverse. This Court will not sit as an appellate authority over the decision of the Selection Committee which consists of experts. No malafides have been alleged by the petitioner against any member of the Selection Committee. It is the job of the Selection Committee, after making comparative assessment of the merits of the candidates, to prepare a panel and in case the petitioner is not found meritorious in comparison of others on merits then his supersession cannot be said to be arbitrary or illegal which warrants any interference of this Court sitting under Article 226 of the Constitution of India. The order annexure 'I' is certainly a non-speaking order, but in that order the Government has only communicated the decision taken by the Selection Committee in respect of non-inclusion of the name of the petitioner in the panel for promotion to the post of Superintending Engineer. When the petitioner was not found meritorious candidate compared to junior persons, no interference is called for by this court in the matter.

8. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged.

zgs/-